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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/082,856

Filing Date: October 19, 2001

Appellant(s): LINNARTZ ET AL.

Edward W. Goodman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08 November 2006 appealing from the Office action mailed 24

October 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2001/0008557

STEFIK

04-2006

Appellant's own admissions contained within the background of the application.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stefik et al.

(US 2001/0008557 A1) in view of Applicant's own admissions.

Claims 1-10:

Stefik discloses the limitations of claims 1-10, with the exception of a specific reference to a mobile phone. Applicant, however, in paragraphs 0008 to 0011 discloses that watermarks are a well known technique, and then goes on to describe uses of the technique to include an audio-based signal from a mobile phone. It would have been obvious to one of ordinary skill in the art to combine Stefik with the Applicant's disclosure of watermarking and mobile phone use because Stefik discloses utilizing a watermarking technique during the distribution of digital files on a computer network.

(10) Response to Argument

Regarding the limitations of claim 1, the combination of Stefik and the Appellant's admitted prior art disclose the claimed invention as mapped below:

- *electronically embedding extra information related to the business model in content* (STEFIK Column 3, Lines 19-22; Column 5, Lines 1-7; AOA Page 2, Lines 7-23);
- *distributing the content with the embedded information via third party to a rendering device* (STEFIK Column 3, Lines 30-33; AOA Page 2, Line 18);
- *electronically rendering the content with the embedded information thereby forming an output signal* (STEFIK Column 3, Lines 30-33; Column 2, Lines 58-64; AOA Page 2, Lines 19-20);
- *receiving the output signal* (STEFIK Column 3, Lines 35-36; Column 2, Line 52);
- *electronically extracting the embedded information from the received output signal* (STEFIK Column 2, Lines 34-48; AOA Page 2, Line 21);
- *processing the extracted embedded information in the course of the business model* (STEFIK Column 2, Lines 34-48; AOA Page 2, Lines 21-23);

In this case, the embedded extra information is interpreted as the watermark data, the content is the digital file, rendering is accomplished by printing or playing the digital file, extraction is accomplished by reading the watermark and determining usage rights, and the business model is the usage rights paid for that are reflected by the watermark in the digital content.

With regard to the limitations of the remaining claims:

- *the extra information is related to an e-commerce application* (STEFIK Column 4, Lines 65-67; Column 9, lines 25+; AOA Page 2, Line 18);
- *said receiving step 25+-48; column 9, Lines 59+; AOA Page 2, Line 21);*
- *said embedding step comprises embedding the extra information in the content using a watermark* (STEFIK Column 5, Lines 1-7; AOA Page 2, Line 25);
- *the output signal is in the acoustical domain* (STEFIK Column 5, Line 12; AOA Page 2, Line 19);
- *said receiving step is performed by a mobile phone* (AOA, Page 2, Lines 24-29).

Stefik does not specifically disclose that the output signal is received by a mobile phone, but does disclose that the output signal may be in audible form. Appellant, in the background of the specification discusses watermarking technology as it existed at the time of the invention, and further disclosed that watermarking can be utilized when an audio signal is sent to a mobile phone. It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the watermarking technology of Stefik with the Appellant's use of watermarking technology to ensure that audio content received on a mobile phone is being properly utilized in the same manner in which audio and video with watermarks are properly disseminated to a mobile phone.

Appellant asserts that, "...Stefik et al. neither discloses nor suggests that the watermark included in the rendering of the digital work may be extracted and subsequently used for purposes other than the mere authentication of the digital work." See page 15 of the brief. The Examiner disagrees and points to the passages cited above. Stefik clearly shows that the embedded watermark is used not only for authentication purposes but also to determine pricing

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and availability of the digital content itself. It is noted that limitation is not explicitly disclosed in any of the independent claims. However, the Examiner respectfully points to at least STEFIK Column 2, Lines 34-48; Column 3, Lines 19-22; Column 4, Lines 65-67; Column 5, Lines 1-7; Column 9, lines 25+.

Appellant asserts that, "...the combination of Stefik et al. and Appellants' admission of the existence of watermarking, neither discloses nor suggests 'receiving the output signal', the output signal being the rendered content (e.g., digital work) with the embedded information (e.g., watermark), 'electronically extracting the embedded information from the received output signal' and 'processing the extracted embedded information in the course of the business model'." The Examiner disagrees and points to the passages cited above.

With regard to the Appellants assertions regarding claim 10, the limitations of claim 10 are similar in scope to those of claims 1 and 7, and are therefore rejected and defended on the same basis.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

James A. Reagan
Primary Examiner – 3621

JAMES A. REAGAN
PRIMARY EXAMINER



13 December 2006

Conferees:

Vincent Millin



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